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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,414

05/15/2006

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NL 031325

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24737

7590

11/04/2008

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

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EXAMINER

MCCORD, PAUL C

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

11/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,414	KORST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL MCCORD	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-4 and 6-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/1/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Independent and Newly Amended Claims 1, 11, 12 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure upon amendment of playback modes including a first and second playback mode is not supported by the original disclosure. Dependent claims 2-10, 13-21 are similarly rejected for at least their dependence on the above independent claims.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 11, 19-21 rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory

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category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

5. Claim 12 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed computer readable medium is not specified as appropriately physical. Furthermore the medium is conflated with internet radio transmissions in a manner that suggests embodiment in a transmission medium, signal or carrier wave. (Korst: sections [0008], [0032])

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
9. Claims 1, 2, 6-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosmi (US Patent 7293060) in view of Zamir et al. (US PGPub 2003/0236582 hereinafter Zamir) further in view of Cliff (US patent 6746246.)
10. Regarding claims 1, 11, 12 (currently amended)

Kosmi teaches:

An electronic disc jockey service wherein an input device or client station accepts a login or other input from each of a plurality of users (Column 4, lines 17-55) via an input device which may be specific to a user. Input or login functions to identify each user among a plurality of users at a location of output devices. Each user may choose to affect an overall playback mode through the input of feedback directed to a content control station via the user input device. (Col 4, l. 55-67) Each user may possess a storage element in the form of an input device such as a laptop, phone or system specific "party gadget" with which the user interacts with the disk jockey service to at least express the user preferences in the form of user requests identifying the likes of each user. (Col 5, l.

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18-60) User expressed preferences of the user who initiated the disk jockey service persist in a manner sufficient to convey the dislikes of at least one user. (Col 10, l. 29-63) The content control station of the service functions to control and select content material based on expressed user preferences in a variety of forms, deliver content material to user locations via a network and client station and output said selections through output devices of various embodiment. (Col 3, l. 35-60; Col 4, l. 6-55; Figure 3) The content control station of Kosmi functions by a first mode wherein users express their likes and desires through their respective or shared input devices and the selection of content material is based on the likes of the user. (Col 8, l. 15-67; Fig 4)

Kosmi does not explicitly teach:

An apparatus wherein each user has associated preferences which include a system for storing the dislikes of a plurality of users and a playback mode wherein the selection of content material functions to abstain for the delivery of disliked content.

In a related field of endeavor Zamir teaches:

A method of media file selection for delivery to users based around various metadata encoded by user reactions including storing persistently the dislike of a particular user toward an artist or genre of music and selecting content for delivery based on negative as well as positive reactions to music stored as a preference and indicative of a playback mode. (Zamir: s. [0214], [0339]) Metadata associated with a musical track can be analyzed by a DSP for specifics relevant to the track including the amount of Bass in any particular track. The amount of bass, or other metadata, can be assigned to a named category i.e. "Heavy bass" then functional as saved preferences indicating a playback

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mode (s. 0214]) It would have been obvious to one of ordinary skill in the art at the time of the invention to include a method for delivering media files based on analytical metadata including the dislike of a user to a certain media or class of media as taught by Zamir within the Kosmi audio player. Kosmi and Zamir both teach systems for the delivery of media files. One would have been motivated to include the usage of metadata as disclosed by Zamir within the Kosmi player for the purpose of adapting a delivery mode of media to users based on the preferences of users in their reactions to the delivered media.

Zamir does not explicitly teach the storage of the dislikes of a plurality of users.

In a related field of endeavor Cliff teaches:

An apparatus with means for monitoring the dislike of a plurality of users through monitoring means whereby a number of people at a group event may operate one or more buttons to show dislike for a delivered media. (Cliff: Col 5, l. 15-46) It would have been obvious to one of ordinary skill in the art at the time of the invention to include a means for registering the dislike of a crowd to a delivered media as taught by Cliff within the Kosmi in view of Zamir device and method. One would have been motivated to do so for the purpose of detecting crowd reaction to a delivered media and tailoring content toward positive expression of crowd reaction.

11. Regarding claim 2 (original)

Kosmi teaches:

**Audio player apparatus according to claim 1, wherein said input means for inputting the presence of at least one user is a set of buttons, wherein each button is**

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**dedicated to a specific user or group of users.** (Col 4, l. 18-42: Figure 3: each user or group can have various input device/devices dedicated to that user or group including keyboards and touch sensitive pads (set of buttons) for the purpose of providing upstream communication to the content source)

12. Regarding claim 6 (currently amended)

Kosmi teaches:

**Audio player apparatus according to ~~any of the preceding claims~~ claim 1, wherein said input means for audio-preferences indicate a preferred genre/mood of the audio to be reproduced by said audio player.** (Col 8, l. 45-67: user audio preferences include the type and genre of content to be delivered)

13. Regarding claim 7 (currently amended)

Zamir teaches:

A method of media file selection for delivery to users based around various metadata encoded by user reactions. Metadata associated with a musical track can be analyzed by a DSP for specifics relevant to the track including the amount of Bass in any particular track. The amount of bass, or other metadata, can be assigned to a named category i.e. “Heavy bass.” (s. 0214])

Applying the Zamir method to the Kosmi devices teaches an audio player apparatus **wherein said audio-preferences comprise volume, bass, treble preferred by the users present.** The Zamir system explicitly teaches the analysis of media files for information relevant to the low end of the audio frequency continuum. The DSP can



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equally well analyze media files for treble information or volume (the representation of apparent energy of the track.)

14. Regarding claim 8 (currently amended)

Zamir teaches:

An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. The apparatus contains an operating mode wherein items from within the database of media files are selected probabilistically by the apparatus based on previously indicated user reactions to other media files, thereby serving to recommend media files which the user may preferable experience. These recommendations can operate based on a risk factor which represents the degree of risk take in playing items that the user is likely to preferentially experience thereby controlling **how strictly the player follows the preferences of the user or group**. When applied to Kosmi the Zamir system functions as an automated Disc Jockey, guiding the delivery media files to users or groups in such a manner as to maximize their potential enjoyment while minimizing the chance that any user or group might be provided media that is to that user or groups distaste.

15. Regarding claim 9 (currently amended)

Zamir teaches:

An apparatus for the automatic selection of a media for delivery to users based around various metadata encoded by user reactions. The apparatus contains **recommender technology** – i.e. an operating mode wherein items from within the database of media files are selected probabilistically by the apparatus based on previously indicated user

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reactions to other media files, thereby serving to recommend media files which the user may preferably experience and deliver these selected files to the user or group.

16. Regarding claim 10

Kosmi teaches:

**An Audio player apparatus according to claim 1 wherein said audio player apparatus is comprised in the group of portable audio players, car audio equipment, internet radios, or digital jukebox devices.** The Kosmi player delivers internet radio – live content sources (Col 6, l. 59-67) including radio broadcasts (Col 4, l. 10-15) may be made available to users by the content control device via an internet connection. (Col 4, l. 14-16; Col 6, l. 60-67; Col 7, l. 1-4)

17. Regarding claim 13, 17:

Kosmi in view of Zamir in view of Cliff teaches:

A system wherein login by the party planner or originator serves to configure the system to prevent selection of content material disliked by one user. (Kosmi: Col 10, l. 18-63)

18. Regarding claim 14-16, 18-21:

Kosmi in view of Zamir in view of Cliff makes obvious:

A system wherein the content control station is configured to deliver a consistent experience by an operating mode designed to be enjoyed by a plurality of users who have actively expressed preferences to content by delivering content that is indicated as liked and not indicated as disliked by any or all of said users or in the alternate to maximize the like and minimize the dislike of said users.

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19. Claims 3, 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Kosmi in view of Zamir in view of Cliff as applied to claims 1, 11, 12 above, and further in view of Vong et al.

(US Patent 6917373 hereinafter Vong.)

20. Regarding claim 3 (original)

Kosmi in view of Zamir in view of Cliff does not teach:

An audio player apparatus according to claim 2 **wherein said buttons each having different states and associated with a user.**

In a related field of endeavor Vong teaches:

A controller for audio playback (see Abstract; Col 2, l 65-67: display unit can function as a user interface for internet radio) that includes buttons within the user interface. Each button can have a different state which can change on activation. (Abstract: each button has characteristics associated with viewable states which may change.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the control panel buttons with different states of Vong within the audio player of apparatus of Kosmi in view of Zamir in view of Cliff. Kosmi in view of Zamir in view of Cliff and Vong both teach systems delivering audio content to a user. One would have been motivated to include the Vong buttons in the Kosmi in view of Zamir in view of Cliff player for the purpose of implementing a device control panel with greater capabilities (Vong: Col 1, l. 34-41) specifically in regards to the construction of the ‘party gadget’ of Kosmi in view of Zamir in view of Cliff.

21. Regarding claim 4 (original)

Kosmi in view of Zamir in view of Cliff teaches:

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An audio player apparatus **according to claim 3 wherein said a first state indicates that the specific user is not present or logged in, a second state indicates that the specific user is present and instructs the audio player that audio that the specific user dislikes not be played, and a third state indicates that the specific user is present and instructs the audio player to deliver audio that the specific user likes.**

Kosmi in view of Zamir in view of Cliff does not teach enactment of said states through the implementation of specific multi-state user buttons

In a related field of endeavor Vong teaches:

A controller for audio playback (see Abstract) consisting of a plurality of buttons; each button having different and user changeable states. (Abstract) Vong teaches a HOME button, activation of which can cause several operations including closing applications and logging a logged-in user out. (Col 9, l. 25-46) The buttons of Vong also toggle between actions.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

2001/0030660 – discloses multimedia synchronization method

2002/0147628 – discloses a recommendation method

2004/0019497 – discloses a method for providing listener requested media

2004/0171377 – discloses a media broadcast system

6731312 – discloses a multimedia apparatus

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6987221 – discloses a playlist generation system

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL MCCORD whose telephone number is (571)270-3701.

The examiner can normally be reached on M-F 7:30AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KUNTZ CURTIS can be reached on (571)272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. M./  
Examiner, Art Unit 2614

/CURTIS KUNTZ/

Supervisory Patent Examiner, Art Unit 2614